

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Supreme Court Case No. 82915

District Court Case No.

A-19-806521-W

C-13-293296-2

PETITION FOR REVIEW BY THE NEVADA SUPREME COURT

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Appeal from an Order Affirming Denial of Petition for Writ of Habeas Corpus

Eighth Judicial District Court, Clark County  
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I. QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals properly denied the appeal as untimely, when it reversed the district court's good cause finding and deprived Mr. Coleman from having his case heard on the merits in contravention of Nevada law; alternatively, whether the COA erroneously overtured the district court's finding of good cause instead of remanding the matter for further findings of fact.

II. REASONS REVIEW IS WARRANTED

The COA denied relief because Mr. Coleman submitted his Petition for Writ of Habeas Corpus shortly after the expiration of the one-year statutory deadline, while ignoring that the State, the Court, and Defense Counsel were unaware that the parties' stipulation did not vitiate the need to find good cause. 4 AA 803-04. This is not only fundamentally unfair to Mr. Coleman as it is his first Petition for such relief, but also because any late filing or nonexistence of argument for good cause was based on a mutual understanding of the parties upon which Mr. Coleman reasonably relied. *See Id.* Not only this, but the COA's denial of relief conflicts with the decisions of this Honorable Court, which required at the very least a remand to district court instead of a reversal of the good cause finding.

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Specifically, the Court of Appeals stated in its Order of Affirmance as follows:

“The district court determined that Muhammad-Coleman had good cause and reviewed the merits of his claims. The district court did not provide factual findings for its good-cause determination but rather stated that its determination allowed for an otherwise untimely petition to be considered on the merits.” *See 08/18/22 Order of Affirmance*, attached hereto as *Exhibit 1*.

The COA then sought arguments in the record for good cause that it deemed unworthy, and unjustifiably ignored that no such arguments were made because of the state’s continued agreement to the stipulation until the eleventh hour. *See Id.*; *see also* 4 AA 790-811. While this does not deem the stipulation valid, it posits a good-faith reason for why specifics concerning good cause were never properly argued, or more importantly, it shows good-faithed reasonable reliance upon behavior of the state and court that constitutes good cause. Meanwhile, the COA rewards the state for offering shifting explanations that cannot be explained away merely because different deputies made the representations at different times. *Id.*; *see* Exh. 1 *generally*. The OOA suggests that the State can represent that it will accept such a stipulation (but neglect to inform defense that they are aware such a stipulation is unenforceable), then can later reverse course and take advantage of the misunderstanding caused by reasonable reliance upon its own statements,

notwithstanding its knowledge to the contrary. Thus, the state could benefit from taking advantage in this way and preclude review on the merits of important Constitutional matters. Indeed, the COA's Order incentivizes future deputy DA's to neither adopt nor be bound by claims made by the state. In every case in the future where this occurs, the state will be incentivized to sign an invalid stipulation and prompt late filing, only to later prevail on the procedural default. This is an unacceptable result.

Moreover, this appeal raises a fundamental issue of statewide importance because it concerns all post-conviction Petitions that will be precluded from review on the merits, due to the reviewing court's discretion on a procedural matter. The affirmance automatically and immediately incentivizes the state for every such post-conviction petition in the future. This case is also for a life sentence murder and is the first such Petition Mr. Coleman has filed; failure to resolve the same on its merits in this situation undermines confidence in the verdict, as Mr. Coleman is forever restricted from appellate review of counsel's performance at trial. 1 AA 001. This restriction would not be because of Mr. Coleman's dalliance or failure to have good cause for late filing, but rather because of his reliance on his counsel's, the state's, and the district court's understanding of the law. *See* 4 AA 761-87.

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III. ARGUMENT

- A. **The Court of Appeals erred as it circumvented Nevada law and improperly decided that the Petition was time-barred, where at most it should have remanded for the district court to make further findings in writing.**

Although application of the statutory procedural default rules to post-conviction habeas petitions are mandatory, a showing of good cause and undue prejudice can overcome the procedural rules. State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003), as modified (June 9, 2003); State v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). However, where the “district court has considered the applicable procedural default rules, applied them to a post-conviction habeas petition, and concluded that claims are not procedurally barred,” the reviewing court will not disturb the district court’s decision. State v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005). Even if the reviewing court disagrees with the district court’s decision, the decision will not be overturned so long as the district court made reasonable efforts to follow the applicable law. Id. Thus, it is not for the reviewing court to decide the question of procedural default; instead, the reviewing court must direct the district court to assess the record and claims, consider and apply the correct procedural rules, and decide in a written order whether the claims are procedurally barred. Id.

Additionally, while this Court has made clear that a stipulation does not vitiate NRS 34.726's requirements of good cause, the State has not been allowed to use this knowledge to its advantage and to a defendant's detriment. Thus, when this happened in *Haberstroh*, the Court found no fault with the lack of specific argument relating to good cause, and stated:

“We realize that the stipulation here preceded our decision in *Pellegrini* and that Haberstroh relied upon the stipulation and did not present evidence or argument in regard to cause for raising his claims. Under the circumstances of this case, we conclude that we can treat the stipulation as establishing the facts⁸ to show cause to raise the relevant claims but allowing consideration of the claims' merits only to determine the question of prejudice. This approach leaves the procedural default rules in effect and allows us to accept the stipulation and decide the appeal.” State v. Haberstroh, 119 Nev. 173, 180–81, 69 P.3d 676, 681–82 (2003), as modified (June 9, 2003).

Analyzing the above, the Nevada Supreme Court later stated, “We held that parties in a post-conviction habeas proceeding cannot stipulate to disregard the procedural default rules, but we realized that Haberstroh had in good faith “relied upon the stipulation and did not present evidence or argument in regard to cause for raising his claims.” State v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark, 121 Nev. 225,

240–41, 112 P.3d 1070, 1080–81 (2005).¹ This was also succinctly discussed in a Nevada District Court case where the parties agreed by stipulation despite Haberstroh’s directive to the contrary. Cook v. Baker, 319CV00081MMDCLB, 2022 WL 717880, at *5–6 (D. Nev. Mar. 10, 2022). There, the State was not allowed to benefit when it agreed to the stipulation and naturally caused defense to forego arguing good cause. Id. Specifically, the Court stated, “Whether through ignorance or trickery, respondents’ agreement for Cook to file the petition late is an extraordinary circumstance.” Id. Thus, the knowledge from *Haberstroh* was imputed to the State, and the fact that the State agreed to a stipulation in contravention of the rules demonstrated good cause for the defendant.

In the instant case, while the District Court did not make specific findings about good cause in its written order, it thoroughly analyzed the same and found good cause. 4 AA 761-88. Ultimately, the district court considered the issues presented on the merits and denied them. *Id.*

After this, it was no longer proper for the COA to reverse the district court’s finding of good cause. Under State v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, it was outside the scope of review for the Court of Appeals to determine that the

¹ Nevada District Courts have followed this same interpretation. Robinson v. Ignacio, 360 F.3d 1044, 1052–53 (9th Cir. 2004) (good cause where defendant “relied upon the stipulation and did not present evidence or argument in regard to cause.”)

Petition was procedurally time-barred. 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005). Here, the district court's findings concerned the merits of the claims before it determined that Appellant had overcome the procedural time-bar under NRS 34.726. Under State v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, the Court of Appeals should not disturb the district court's decision even if it does not agree with it, so long as the district court made reasonable efforts to comply with the procedural bars, which they did unequivocally here. 4 AA 803-04. The district court considered the totality of the circumstances in this matter prior to finding good cause. Notably, the OOA states that filing was after the stipulation, however the parties had separately agreed to allow filing on the date the Petition was ultimately filed. (Exh. A at 3). Understandably, this was not discussed at the hearing, because the parties' previous conduct and representations surrounding the stipulation, as well as the court's finding made it moot.² To hold this only against defense is a fundamental

² The argument made in the reply brief about the district court's analysis of good cause in its Order was as follows: "Here, the district court properly analyzed good cause under NRS 34.726 (1), and reasonably exercised its discretion. 4 AA 761. After reviewing the state's argument concerning good cause in its Opposition, and the same in the Petitioner's Reply, the district court granted Appellant the ability to have his Petition heard on the merits. 4 AA 803-04. At the hearing on the Petition,

miscarriage of justice, as it precludes review on the merits despite the observance of all procedural rules.

In the alternative, if the Court of Appeals felt that the district court did not properly apply the procedural bar, then it was required to remand the case back to the district court with the direction to make further findings concerning the procedural bars in a written order. State v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 121 Nev. 225, 233, 112 P.3d 1070, 1075 (2005). Stated slightly differently, the COA circumvented Nevada law when it decided that the Petition was time-barred in its Order of Affirmance. (Exh. 1 at 4). This is particularly prejudicial as the course of conduct of all parties, upon which Mr. Coleman relied, made it unnecessary to specify the facts underlying Mr. Coleman's request for additional time, which were

the state acknowledged both that it was not comfortable arguing that good cause did not exist given the prior stipulation, *after considering that the stipulation was not legally valid*, and noted that it would submit on the arguments in the Opposition despite not finding them particularly persuasive. 4 AA 803-04 (emphasis added). It is also incorrect when Respondent claims that the stipulated Petition deadline was missed. *RAB* at 13. Certainly, if the state felt the agreed to deadline was missed, this would have been a component of either the Opposition or oral argument." *ARB* at 2-3.

discussed with the State prior to obtaining any stipulations or agreements to file after the statutory deadline. *See* 4 AA 803-04. Again, the COA found flaw in the district court's analysis of good cause, *and then* sought the record for the same, despite the extraordinary circumstances here that would ensure the COA would not be satisfied. This is fundamentally unfair to Mr. Coleman. First, there exists significant and improper incentivization of the state to continue to accept such stipulations should review not be granted. Second, there are also several claims in the appeal that go directly to the prejudice Mr. Coleman faced to his right to present a defense, his right to remain silent, and his right to be present in court; meaning that the harm caused by this procedural reversal is exceedingly high. AOB at 25, 38, 44. Additionally, Mr. Coleman's claims were not bare and/or naked, but rather demonstrated a reasonable probability of a different result absent such trial deficiencies. Not only this, but because this matter proceeded to trial and was not resolved with a Guilty Plea, the need for careful review is even more apparent. Nonetheless, if the COA was not satisfied with the findings made by the district court, it should not have circumvented Nevada law and refused review of the appeal on its merits based on its reversal of good cause.

Therefore, Mr. Coleman requests that this Honorable Court reverse the Court of Appeal's decision and review this matter on the merits, or alternatively, to remand the matter to direct the district court to make specific findings as to good cause.

IV. CONCLUSION

This Honorable Court should take the opportunity to correct the COA bypassing Nevada law, and as a matter of state-wide importance, make clear that the COA cannot make such findings concerning procedural bars and unreasonably overturn the district court's discretion, particularly where the district court makes efforts to properly analyze good cause. As such, the COA's decision is incongruent with this Court's prior precedents and should be corrected by this Court.

DATED this 22nd day of September 2022.

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RULE 28.2 ATTORNEY CERTIFICATE

1. I hereby certify that I have read this petition for review, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied upon is found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.
2. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font.

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3. I further certify this brief complies with the page or type-volume limitations of NRAP 40B(d) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(c), it is proportionally spaced, has a typeface of 14 points or more, and contains 2,841 words.

DATED this 22nd day of September 2022.

By: Waleed Zaman
Waleed Zaman, Esq.
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September 22nd, 2022. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

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EXHIBIT 1

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DARION MUHAMMAD-COLEMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82915-COA

FILED
AUG 18 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Darion Muhammad-Coleman appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Tierra Danielle Jones, Judge.

Muhammad-Coleman filed his petition on December 6, 2019, more than one year after issuance of the remittitur on direct appeal on July 30, 2018. *See Muhammad-Coleman*, No. 72867, 2018 WL 3302828 (Nev. July 3, 2018) (Order of Affirmance).¹ Thus, Muhammad-Coleman's petition was untimely filed. *See* NRS 34.726(1). Muhammad-Coleman's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.* “We give deference to the district court's factual findings regarding good cause, but we will review the court's

¹The district court entered an amended judgment of conviction on August 29, 2018, to clarify that Muhammad-Coleman had been convicted of first-degree murder with the use of a deadly weapon. Entry of the amended judgment of conviction did not provide good cause because all of the claims Muhammad-Coleman raised in the instant petition arose out of the proceedings involving his initial judgment of conviction. *See Sullivan v. State*, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004).

application of the law to those facts de novo.” *State v. Huebler*, 128 Nev. 192, 197, 275 P.3d 91, 95 (2012).

The district court determined that Muhammad-Coleman had good cause and reviewed the merits of his claims. The district court did not provide factual findings for its good-cause determination but rather stated that its determination allowed for an otherwise untimely petition to be considered on the merits. “[G]ood cause’ means a ‘substantial reason; one that affords a legal excuse.” *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Muhammad-Coleman raised several claims of good cause.

First, Muhammad-Coleman claimed that he had cause for his delay because the basis for several of his claims did not exist until after he had completed an investigation into those claims. A good-cause claim must be raised within one year of its becoming available. *Rippo v. State*, 134 Nev. 411, 422, 423 P.3d 1084, 1097 (2018). Muhammad-Coleman’s underlying claims were reasonably available to have been raised during the timely filing period for a postconviction petition, and Muhammad-Coleman did not allege that an impediment external to the defense prevented him from raising his claims in a timely filed petition. *See Hathaway*, 119 Nev. at 252-53, 71 P.3d at 506. Accordingly, Muhammad-Coleman was not entitled to relief based on this good-cause claim.

Second, Muhammad-Coleman claimed that he had cause for his delay because the State agreed to allow him to file his petition after expiration of the timely filing deadline. The Nevada Supreme Court has previously stated “that the parties in a post-conviction habeas proceeding cannot stipulate to disregard the statutory procedural default rules. We direct all counsel in the future not to enter into stipulations like the one in this case and direct the district courts not to adopt such stipulations.” *State*

v. Haberstroh, 119 Nev. 173, 181, 69 P.3d 676, 682 (2003). Accordingly, Muhammad-Coleman was not entitled to relief based on this good-cause claim.²

Third, Muhammad-Coleman appeared to claim that he had cause for his delay because he wished to exhaust state remedies. Exhaustion of state remedies in order to seek federal review is insufficient to demonstrate good cause. *See Colley v. State*, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989), *superseded by statute on other grounds as stated in Huebler*, 128 Nev. at 197 n.2, 275 P.3d at 95 n.2. Accordingly, Muhammad-Coleman was not entitled to relief based on this good-cause claim.

Fourth, Muhammad-Coleman argued that he had cause for his delay because his appellate counsel did not raise his underlying claims on direct appeal. "In order to constitute adequate cause, the ineffective assistance of counsel claim itself must not be procedurally defaulted." *Hathaway*, 119 Nev. at 252, 71 P.3d at 506. Muhammad-Coleman's ineffective-assistance-of-counsel claim was itself procedurally barred because he raised it in an untimely manner. Muhammad-Coleman's underlying claim of ineffective assistance of counsel was reasonably available to have been raised during the timely filing period for a postconviction petition, and Muhammad-Coleman did not demonstrate an impediment external to the defense prevented him from raising it in a

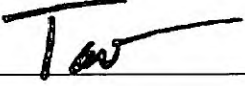
²In his reply brief on appeal, Muhammad-Coleman relies heavily on the improper stipulation to file an untimely petition. We note that even were a stipulation to overcome procedural bars permitted, Muhammad-Coleman filed the stipulation after the one-year timely filing deadline had passed, and he did not file his petition until more than two months after the parties' agreed-upon filing date.

timely manner. *See id.* at 252-53, 71 P.3d at 506. Accordingly, Muhammad-Coleman was not entitled to relief based on this good-cause claim.

For the foregoing reasons, Muhammad-Coleman did not meet his burden to demonstrate cause for his delay. *See* NRS 34.726(1). Therefore, we conclude that the district court erred by finding Muhammad-Coleman demonstrated good cause and by reviewing his underlying claims on the merits. Nevertheless, the district court properly concluded that Muhammad-Coleman was not entitled to relief, and therefore, we affirm. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Tierra Danielle Jones, District Judge
Zaman & Trippiedi, PLLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk